

1 AN ACT concerning taxes.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Property Tax Code is amended by changing
5 Sections 31-5, 31-10, 31-20, and 31-25 and by adding Section
6 3-46 as follows:

7 (35 ILCS 200/31-5)

8 Sec. 31-5. Definitions. "Recordation" includes the
9 issuance of certificates of title by Registrars of Title
10 under the Registered Titles (Torrens) Act pursuant to the
11 filing of deeds or trust documents for that purpose, as well
12 as the recording of deeds or trust documents by recorders.

13 "Department" means the Department of Revenue.

14 "Person" means any natural individual, firm, partnership,
15 association, joint stock company, joint adventure, public or
16 private corporation, limited liability company, or a
17 receiver, executor, trustee, guardian or other representative
18 appointed by order of any court.

19 "Value" means the amount of the full actual consideration
20 for the real property, including the amount of any lien on
21 the real property assumed by the buyer.

22 "Trust document" means a document required to be recorded
23 under the Land Trust Recordation and Transfer Tax Act.

24 "Beneficial interest" includes, but is not limited to:

25 (1) the beneficial interest in an Illinois land
26 trust;

27 (2) the lessee interest in a ground lease
28 (including any interest of the lessee in the related
29 improvements) that provides for a term of 30 or more
30 years when all options to renew or extend are included,
31 whether or not any portion of the term has expired; or

1 (3) the indirect interest in real property as
2 reflected by a controlling interest in a real estate
3 entity.

4 "Controlling interest" means 50% or more of the fair
5 market value of all ownership interests or beneficial
6 interests in a real estate entity.

7 "Real estate entity" means any person including, but not
8 limited to, any partnership, corporation, limited liability
9 company, trust, other entity, or multi-tiered entity, that
10 exists or acts substantially for the purpose of holding
11 directly or indirectly title to or beneficial interest in
12 real property. There is a rebuttable presumption that an
13 entity is a real estate entity if it owns, directly or
14 indirectly, real property having a fair market value greater
15 than 75% of the total fair market value of all of the
16 entity's assets, determined without deduction for any
17 mortgage, lien, or encumbrance.

18 (Source: P.A. 92-651, eff. 7-11-02.)

19 (35 ILCS 200/31-10)

20 Sec. 31-10. Imposition of tax. A tax is imposed on the
21 privilege of transferring title to real estate, as
22 ~~represented-by-the-deed-that-is-filed-for-recordation,~~ and on
23 the privilege of transferring a beneficial interest in real
24 ~~property that--is-the-subject-of-a-land-trust-as-represented~~
25 ~~by-the-trust-document-that-is-filed-for-recordation,~~ and on
26 the privilege of transferring a controlling interest in a
27 real estate entity, at the rate of 50¢ for each \$500 of value
28 or fraction of \$500 stated in the declaration required by
29 Section 31-25. If, however, the ~~deed-or-trust-document~~
30 ~~states--that--the~~ real estate, beneficial interest, or
31 controlling interest is transferred subject to a mortgage,
32 the amount of the mortgage remaining outstanding at the time
33 of transfer shall not be included in the basis of computing

1 the tax. The tax is due if the transfer is made by one or
2 more related transactions or involves one or more persons or
3 entities and whether or not a document is recorded.

4 (Source: P.A. 86-624; 86-925; 86-1028; 86-1475; 87-543;
5 88-455.)

6 (35 ILCS 200/31-20)

7 Sec. 31-20. Affixing of stamps. Payment of the tax shall
8 be evidenced by revenue stamps in the amount required to show
9 full payment of the tax imposed by Section 31-10. Except as
10 provided in Section 31-45, a deed, document transferring a
11 controlling interest in real property, or trust document
12 shall not be accepted for filing by any recorder or registrar
13 of titles unless revenue stamps in the required amount have
14 been purchased from the recorder or registrar of titles of
15 the county where the deed, document transferring a
16 controlling interest in real property, or trust document is
17 being filed for recordation. The revenue stamps shall be
18 affixed to the deed, document transferring a controlling
19 interest in real property, or trust document by the recorder
20 or the registrar of titles either before or after recording
21 as requested by the grantee. A person using or affixing a
22 revenue stamp shall cancel it and so deface it as to render
23 it unfit for reuse by marking it with his or her initials and
24 the day, month and year when the affixing occurs. The
25 marking shall be made by writing or stamping in indelible ink
26 or by perforating with a machine or punch. However, the
27 revenue stamp shall not be so defaced as to prevent ready
28 determination of its denomination and genuineness.

29 (Source: P.A. 86-624; 86-925; 86-1028; 86-1475; 87-543;
30 88-455.)

31 (35 ILCS 200/31-25)

32 Sec. 31-25. Transfer declaration. At the time a deed, a

1 document transferring a controlling interest in real
2 property, or trust document is presented for recordation, or
3 within 3 business days after the transfer is effected,
4 whichever is earlier, there shall also be presented to the
5 recorder or registrar of titles a declaration, signed by at
6 least one of the sellers and also signed by at least one of
7 the buyers in the transaction or by the attorneys or agents
8 for the sellers or buyers. The declaration shall state
9 information including, but not limited to: (a) the full
10 consideration for the property or interest in real property
11 so transferred; (b) the parcel identifying number of the
12 property; (c) the legal description of the property; (d) the
13 date of the deed, the date the transfer was effected, or the
14 date of the trust document; (e) the type of deed, transfer,
15 or trust document; (f) the address of the property; (g) the
16 type of improvement, if any, on the property; (h) information
17 as to whether the transfer is between related individuals or
18 corporate affiliates or is a compulsory transaction; (i) the
19 lot size or acreage; (j) the value of personal property sold
20 with the real estate; (k) the year the contract was initiated
21 if an installment sale; and (l) the name, address, and
22 telephone number of the person preparing the declaration.
23 Except as provided in Section 31-45, a deed, a document
24 transferring a controlling interest in real property, or
25 trust document shall not be accepted for recordation unless
26 it is accompanied by a declaration containing all the
27 information requested in the declaration. When the
28 declaration is signed by an attorney or agent on behalf of
29 sellers or buyers who have the power of direction to deal
30 with the title to the real estate under a land trust
31 agreement, the trustee being the mere repository of record
32 legal title with a duty of conveying the real estate only
33 when and if directed in writing by the beneficiary or
34 beneficiaries having the power of direction, the attorneys or

1 agents executing the declaration on behalf of the sellers or
2 buyers need identify only the land trust that is the
3 repository of record legal title and not the beneficiary or
4 beneficiaries having the power of direction under the land
5 trust agreement. The declaration form shall be prescribed by
6 the Department and shall contain sales information questions.
7 For sales occurring during a period in which the provisions
8 of Section 17-10 require the Department to adjust sale prices
9 for seller paid points and prevailing cost of cash, the
10 declaration form shall contain questions regarding the
11 financing of the sale. The subject of the financing
12 questions shall include any direct seller participation in
13 the financing of the sale or information on financing that is
14 unconventional so as to affect the fair cash value received
15 by the seller. The intent of the sales and financing
16 questions is to aid in the reduction in the number of buyers
17 required to provide financing information necessary for the
18 adjustment outlined in Section 17-10. For sales occurring
19 during a period in which the provisions of Section 17-10
20 require the Department to adjust sale prices for seller paid
21 points and prevailing cost of cash, the declaration form
22 shall include, at a minimum, the following data: (a) seller
23 paid points, (b) the sales price, (c) type of financing
24 (conventional, VA, FHA, seller-financed, or other), (d) down
25 payment, (e) term, (f) interest rate, (g) type and
26 description of interest rate (fixed, adjustable or
27 renegotiable), and (h) an appropriate place for the inclusion
28 of special facts or circumstances, if any. The Department
29 shall provide an adequate supply of forms to each recorder
30 and registrar of titles in the State.

31 (Source: P.A. 91-555, eff. 1-1-00.)

32 (35 ILCS 200/31-46 new)

33 Sec. 31-46. Exemption from tax equal to corporate

1 franchise taxes paid. If a transfer of a controlling interest
 2 in a real estate entity is taxed under this Article and the
 3 real estate entity liable for the tax under this Article is
 4 also liable for corporate franchise taxes under the Business
 5 Corporation Act of 1983 as a result of the transfer, then the
 6 real estate entity is exempt from paying the tax imposed
 7 under this Article to the extent of the corporate franchise
 8 tax paid by the real estate entity as a result of the
 9 transfer. The exemption shall not reduce the real estate
 10 entity's tax liability under this Article to less than zero.

11 Section 10. The Stock, Commodity, or Options Transaction
 12 Tax Exemption Act is amended by adding Section 3 as follows:

13 (35 ILCS 820/3 new)

14 Sec. 3. Construction of Act. Nothing in this Act shall
 15 be construed as prohibiting or otherwise invalidating any
 16 real estate transfer tax or fee authorized or permitted by
 17 Section 31-10 of the Property Tax Code, Section 5-1031.1 of
 18 the Counties Code, or Section 8-3-19 of the Illinois
 19 Municipal Code. This Section is intended as a clarification
 20 and not as a change to existing law.

21 Section 15. The Counties Code is amended by changing
 22 Section 5-1031.1 as follows:

23 (55 ILCS 5/5-1031.1)

24 Sec. 5-1031.1. Home rule real estate transfer taxes.

25 (a) After the effective date of this amendatory Act of
 26 the 93rd General Assembly 1996 and subject to this Section, a
 27 home rule county may impose or increase a tax or other fee on
 28 the privilege of transferring title to real estate, as
 29 ~~represented by the deed that is filed for recordation,~~ and on
 30 the privilege of transferring a beneficial interest in a land

1 trust-holding-legal--title--to real property, and on the
2 privilege of transferring a controlling interest in a real
3 estate entity, as the terms "beneficial interest",
4 "controlling interest", and "real estate entity" are defined
5 in Article 31 of the Property Tax Code as-represented-by--the
6 trust--document-that-is-filed-for-recordation. Such a tax or
7 other fee on-the-privilege--of--transferring--title--to--real
8 estate,--as--represented--by--the--deed--that--is--filed--for
9 recordation,--and--on--the--privilege--of--transferring--a
10 beneficial-interest-in-a-land-trust-holding--legal--title--to
11 real--property,--as-represented-by-the-trust-document-that-is
12 filed-for-recordation, shall hereafter be referred to as a
13 real estate transfer tax.

14 (b) Before adopting a resolution to submit the question
15 of imposing or increasing a real estate transfer tax to
16 referendum, the corporate authorities shall give public
17 notice of and hold a public hearing on the intent to submit
18 the question to referendum. This hearing may be part of a
19 regularly scheduled meeting of the corporate authorities.
20 The notice shall be published not more than 30 nor less than
21 10 days prior to the hearing in a newspaper of general
22 circulation within the county. The notice shall be published
23 in the following form:

24 Notice of Proposed (Increased) Real Estate Transfer
25 Tax for (commonly known name of county).

26 A public hearing on a resolution to submit to
27 referendum the question of a proposed (increased) real
28 estate transfer tax for (legal name of the county) in an
29 amount of (rate) to be paid by the buyer (seller) of the
30 real estate transferred will be held on (date) at (time)
31 at (location). The current rate of real estate transfer
32 tax imposed by (name of county) is (rate).

33 Any person desiring to appear at the public hearing
34 and present testimony to the taxing district may do so.

1 (c) A notice that includes any information not specified
2 and required by this Section is an invalid notice. All
3 hearings shall be open to the public. At the public hearing,
4 the corporate authorities of the county shall explain the
5 reasons for the proposed or increased real estate transfer
6 tax and shall permit persons desiring to be heard an
7 opportunity to present testimony within reasonable time
8 limits determined by the corporate authorities. A copy of
9 the proposed ordinance shall be made available to the general
10 public for inspection before the public hearing.

11 (d) No home rule county shall impose a new real estate
12 transfer tax after the effective date of this amendatory Act
13 of 1996 without prior approval by referendum. No home rule
14 county shall impose an increase of the rate of a current real
15 estate transfer tax without prior approval by referendum. A
16 home rule county may impose a new real estate transfer tax or
17 may increase an existing real estate transfer tax with prior
18 referendum approval. The referendum shall be conducted as
19 provided in subsection (e). An existing ordinance or
20 resolution imposing a real estate transfer tax may be amended
21 without approval by referendum if the amendment does not
22 increase the rate of the tax.

23 (e) The home rule county shall, by resolution, provide
24 for submission of the proposition to the voters. The home
25 rule county shall certify the resolution and the proposition
26 to the proper election officials in accordance with the
27 general election law. If the proposition is to impose a new
28 real estate transfer tax, it shall be in substantially the
29 following form: "Shall (name of county) impose a real estate
30 transfer tax at a rate of (rate) to be paid by the buyer
31 (seller) of the real estate transferred, with the revenue of
32 the proposed transfer tax to be used for (purpose)?" If the
33 proposition is to increase an existing real estate transfer
34 tax, it shall be in the following form: "Shall (name of

1 county) impose a real estate transfer tax increase of
 2 (percent increase) to establish a new real estate transfer
 3 tax rate of (rate) to be paid by the buyer (seller) of the
 4 real estate transferred? The current rate of the real estate
 5 transfer tax is (rate), and the revenue is used for
 6 (purpose). The revenue from the increase is to be used for
 7 (purpose).".

8 If a majority of the electors voting on the proposition
 9 vote in favor of it, the county may impose or increase the
 10 real estate transfer tax.

11 (f) Nothing in this amendatory Act of 1996 shall limit
 12 the purposes for which real estate transfer tax revenues may
 13 be collected or expended.

14 (g) A home rule county may not impose real estate
 15 transfer taxes other than as authorized by this Section. This
 16 Section is a denial and limitation of home rule powers and
 17 functions under subsection (g) of Section 6 of Article VII of
 18 the Illinois Constitution.

19 (h) Notwithstanding subsection (g) of this Section, any
 20 real estate transfer taxes that were imposed by a county at
 21 any time prior to the effective date of this amendatory Act
 22 of the 93rd General Assembly are hereby specifically
 23 authorized, permitted, and validated under this subsection
 24 (h).

25 (Source: P.A. 89-701, eff. 1-17-97; 90-14, eff. 7-1-97.)

26 Section 20. The Illinois Municipal Code is amended by
 27 changing Section 8-3-19 as follows:

28 (65 ILCS 5/8-3-19)

29 Sec. 8-3-19. Home rule real estate transfer taxes.

30 (a) After the effective date of this amendatory Act of
 31 the 93rd General Assembly 1996 and subject to this Section, a
 32 home rule municipality may impose or increase a tax or other

1 fee on the privilege of transferring title to real estate, as
2 ~~represented by the deed that is filed for recordation,~~ and on
3 the privilege of transferring a beneficial interest in a ~~land~~
4 ~~trust holding legal title to~~ real property, and on the
5 privilege of transferring a controlling interest in a real
6 estate entity, as the terms "beneficial interest",
7 "controlling interest", and "real estate entity" are defined
8 in Article 31 of the Property Tax Code as represented by the
9 ~~trust document that is filed for recordation.~~ Such a tax or
10 other fee ~~on the privilege of transferring title to real~~
11 ~~estate, as represented by the deed that is filed for~~
12 ~~recordation, and on the privilege of transferring a~~
13 ~~beneficial interest in a land trust holding legal title to~~
14 ~~real property, as represented by the trust document that is~~
15 ~~filed for recordation,~~ shall hereafter be referred to as a
16 real estate transfer tax.

17 (b) Before adopting a resolution to submit the question
18 of imposing or increasing a real estate transfer tax to
19 referendum, the corporate authorities shall give public
20 notice of and hold a public hearing on the intent to submit
21 the question to referendum. This hearing may be part of a
22 regularly scheduled meeting of the corporate authorities.
23 The notice shall be published not more than 30 nor less than
24 10 days prior to the hearing in a newspaper of general
25 circulation within the municipality. The notice shall be
26 published in the following form:

27 Notice of Proposed (Increased) Real Estate Transfer
28 Tax for (commonly known name of municipality).

29 A public hearing on a resolution to submit to
30 referendum the question of a proposed (increased) real
31 estate transfer tax for (legal name of the municipality)
32 in an amount of (rate) to be paid by the buyer (seller)
33 of the real estate transferred will be held on (date) at
34 (time) at (location). The current rate of real estate

1 transfer tax imposed by (name of municipality) is (rate).

2 Any person desiring to appear at the public hearing
3 and present testimony to the taxing district may do so.

4 (c) A notice that includes any information not specified
5 and required by this Section is an invalid notice. All
6 hearings shall be open to the public. At the public hearing,
7 the corporate authorities of the municipality shall explain
8 the reasons for the proposed or increased real estate
9 transfer tax and shall permit persons desiring to be heard an
10 opportunity to present testimony within reasonable time
11 limits determined by the corporate authorities. A copy of the
12 proposed ordinance shall be made available to the general
13 public for inspection before the public hearing.

14 (d) No home rule municipality shall impose a new real
15 estate transfer tax after the effective date of this
16 amendatory Act of 1996 without prior approval by referendum.
17 No home rule municipality shall impose an increase of the
18 rate of a current real estate transfer tax without prior
19 approval by referendum. A home rule municipality may impose
20 a new real estate transfer tax or may increase an existing
21 real estate transfer tax with prior referendum approval. The
22 referendum shall be conducted as provided in subsection (e).
23 An existing ordinance or resolution imposing a real estate
24 transfer tax may be amended without approval by referendum if
25 the amendment does not increase the rate of the tax.

26 (e) The home rule municipality shall, by resolution,
27 provide for submission of the proposition to the voters. The
28 home rule municipality shall certify the resolution and the
29 proposition to the proper election officials in accordance
30 with the general election law. If the proposition is to
31 impose a new real estate transfer tax, it shall be in
32 substantially the following form: "Shall (name of
33 municipality) impose a real estate transfer tax at a rate of
34 (rate) to be paid by the buyer (seller) of the real estate

1 transferred, with the revenue of the proposed transfer tax to
2 be used for (purpose)?" . If the proposition is to increase
3 an existing real estate transfer tax, it shall be in the
4 following form: "Shall (name of municipality) impose a real
5 estate transfer tax increase of (percent increase) to
6 establish a new transfer tax rate of (rate) to be paid by the
7 buyer (seller) of the real estate transferred? The current
8 rate of the real estate transfer tax is (rate), and the
9 revenue is used for (purpose). The revenue from the increase
10 is to be used for (purpose).".

11 If a majority of the electors voting on the proposition
12 vote in favor of it, the municipality may impose or increase
13 the municipal real estate transfer tax or fee.

14 (f) Nothing in this amendatory Act of 1996 shall limit
15 the purposes for which real estate transfer tax revenues may
16 be collected or expended.

17 (g) A home rule municipality may not impose real estate
18 transfer taxes other than as authorized by this Section. This
19 Section is a denial and limitation of home rule powers and
20 functions under subsection (g) of Section 6 of Article VII of
21 the Illinois Constitution.

22 (h) Notwithstanding subsection (g) of this Section, any
23 real estate transfer taxes that were imposed by a
24 municipality at any time prior to the effective date of this
25 amendatory Act of the 93rd General Assembly are hereby
26 specifically authorized, permitted, and validated under this
27 subsection (h).

28 (Source: P.A. 89-701, eff. 1-17-97.)

29 Section 99. Effective date. This Act takes effect upon
30 becoming law.